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EXAMINER

GOLIGHTLY, ERIC WAYNE

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1792

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/539,994
Filing Date: June 17, 2005
Appellant(s): ROSENBAUER, MICHAEL

James E. Howard (Reg. No. 39,715)
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 18 December 2009 appealing from the Office action mailed 07 July 2009.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct. It is noted that the Amendment After Final filed on 05 October 2009 included arguments but no proposed amendments

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

A substantially correct copy of appealed claims 20 and 21 appears on page 12 of the Appendix to the appellant's brief. The minor errors are as follows: regarding claim 20, the phrase ", the operating for identifying the second part of the identification system" in lines 7 and 8 should be deleted and the phrase "based upon the identified data" should be added between the words "device" and "and" in line 9.

(8) Evidence Relied Upon

DE 10039408	Zucholl	12-2001
WO 0032864	Mourad	06-2000

(9) Ground of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 10039408 to Zucholl (hereinafter “Zucholl”) in view of WO 0032864 to Mourad (hereinafter “Mourad”).

Regarding claim 20, Zucholl teaches a method for treating objects with at least one treatment agent in a household device (EPO machine translation of Zucholl detailed description, paragraph beginning "Object [sic] of the invention"), comprising: operating a bar code reader, computer and controller (drawing, ref. 6, 3 and 7), or first part of an identification system, to identify data of a second part of the identification system, the data of the second part of the identification system being associated with a packaging (id., paragraph beginning “In an other [sic] particularly favourable embodiment a reading”); and adapting a treatment of objects by the household device based upon the identified data (id., paragraphs beginning "An apparatus become”).

Zucholl does not explicitly teach the data of the second part of the identification system comprises information on a dosing device. Mourad teaches a method of controlling a washing machine (abstract) and discloses operating a washing machine control unit (EPO machine translation of Mourad detailed description, paragraph

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beginning "Washing machine control") to identify data of an external datum carrier (id, paragraphs beginning "The object is solved by a method" and "The substantial information"), or second part of the identification system, that comprises information on a dosing device (id, paragraphs beginning "The parts of the wash program", "The detergent dosage represents", "On the basis of these ... measured parameters" and "By this 'division of responsibilities'"). The inclusion of the dosing device information is disclosed as advantageously reducing the need for detergent producers to be concerned with the characteristics of dosing devices (id, paragraph beginning "By this 'division of responsibilities'"). It would have been obvious to one of ordinary skill in the art at the time of the invention to include information on a dosing device operable to dose the treatment agent as per the method of the Mourad teaching in the method as per the Zucholl teaching in order to reduce the need for detergent producers to be concerned with the characteristics of dosing devices. Further, the skilled artisan would have found it obvious to that the information be associated with the packaging of the dosing device to enhance operator and bar code reading of the information.

Regarding claim 21, Zucholl and Mourad disclose the method wherein adapting the treatment of objects by the household device comprises adapting parameters of a treatment control parameter to the information (EPO machine translation of Mourad detailed description, paragraph beginning "Due to the characteristics").

(10) Response to Argument

Regarding the ground of rejection, appellant apparently first argues that there is insufficient motivation for combining Zucholl (DE 10039408) and Mourad (WO 0032864) since, it is alleged, the Examiner's rationale for combining is merely conclusory (see the Appeal Brief at page 8, first through third paragraphs) and based upon the "mere fact that Zucholl ... and ... Mourad each discloses [sic] influencing or controlling a washing machine program based upon, respectively, information read by a device for reading information on a package of a treatment agent or information on an external datum carrier" (see the Appeal Brief at page 8, last paragraph). The Examiner takes the position that the rationale for combining the references is based upon the teaching of the applied art and a reasonable inference.

It is noted that the Examiner's stated rationale for combining the feature as per the Mourad teaching, i.e. including information on a dosing device operable to dose the treatment agent, in the method as per the Zucholl teaching is "in order to reduce the need for detergent producers to be concerned with the characteristics of dosing devices (see the Office action mailed 07 July 2009 at the paragraph bridging pages 3 and 4). Here, contrary to appellant's assertion of a conclusory statement, the Examiner's stated motivation to combine comes from the teaching of the applied art. As stated in the Office action mailed on 07 July 2009, paragraph bridging pages 3 and 4, Mourad discloses using detergent dosing information that is provided external to the washing machine, i.e. not by the washing machine manufacturer (EPO machine translation of the

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Mourad description, paragraph beginning "The detergent dosage represents") and that by such a "'division of responsibilities' the detergent producer does not have to be concerned with characteristics of the dosing devices" (EPO machine translation of the Mourad description, paragraph beginning "By this "division of responsibilities)"). Thus, Mourad provides motivation to combine.

The Examiner makes an inference in stating that the skilled artisan would have found it obvious that the information be associated with the packaging of the dosing device to enhance operator and bar code reading of the information (see Office action mailed 07 July 2009, paragraph bridging pages 3 and 4). The Examiner takes the position that this is an entirely reasonable inference. The applied art discloses detecting machine-readable information, e.g. a bar code, on the packaging (see the EPO machine translation of the Zucholl description at the paragraph beginning "In an other [sic] particularly favourable embodiment a reading unit becomes" and the paragraph beginning "First by the operator a corresponding characterized packaging of the used detergent is led past the bar code reader"). Considering the potential difficulties that would arise if the if the information were *not* associated with the packaging, e.g. how difficult it would be to read the bar code information if the bar code were inside a dosing device or if the bar code were in a different building, the skilled artisan would have found it obvious that the information be associated with the packaging of the dosing device.

Appellant's assertion that the Examiner "does not provide any articulated reasoning with a rationale underpinning" to support a legal conclusion of obviousness

(see the Appeal Brief at page 8, last paragraph) is baffling since, as discussed above, an articulated, rational reasoning is provided at, e.g., the Office action mailed 07 July 2009, paragraph bridging pages 3 and 4).

Appellant next argues that the applied art does not teach or suggest associating information concerning a dosing device with the packaging of the dosing device since, it is alleged, neither Mourad nor Zucholl individually discloses associating information concerning a dosing device with the packaging of the dosing device (see the Appeal Brief at page 9, second paragraph and page 10, first and last paragraphs). The Examiner takes the position that one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Thus, Zucholl provides the feature of associating information with a packaging (see the Office action mailed 07 July 2009, paragraph bridging pages 2 and 3) and Mourad provides the feature that the information comprises information on a dosing device (see the Office action mailed 07 July 2009, paragraph bridging pages 3 and 4).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

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Respectfully submitted,

/Eric Golightly/

Examiner, Art Unit 1792

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